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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/767,413

01/23/2001

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09/01/2010

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EXAMINER

PHAM, TOAN NGOC

ART UNIT

PAPER NUMBER

2612

MAIL DATE

DELIVERY MODE

09/01/2010

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CYNTHIA L. CASSEL
and ROBERT H. CASSEL, JR.

Appeal 2010-005764
Application 09/767,413
Technology Center 2600

Before ROBERT E. NAPPI, KENNETH W. HAIRSTON, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.
HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134(a) from the final rejection of claims 1 to 11. We will affirm.

The disclosed invention relates to a combination breathing monitor alarm and audio baby alarm that comprises a transmitter forming a main body of a linearly elongated, pliable strap of a soft and formable material that is easily wrapable about the chest of an infant, and a receiver for receiving signals transmitted by the transmitter (Figs. 1-3; Spec. 5-8, 12, and 13; Abstract).

Claim 1 is the only independent claim on appeal, and it reads as follows:

1. A combination breathing monitor alarm and audio baby alarm comprising:

an attachable transmitter forming a main body of a linearly elongated, pliable chest strap of a soft and formable material that is easily wrapable about the chest of an infant; and

a receiver housing receiver control circuitry for receiving signals transmitted by said transmitter.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Montgieux	US 4,696,307	Sep. 29, 1987
Tao	US 4,862,144	Aug. 29, 1989
O'Dwyer	US 5,928,157	July 27, 1999
Teodorescu	US 6,011,477	Jan. 4, 2000

The Examiner rejected claims 1, 2, and 4 under 35 U.S.C. § 103(a) based upon the teachings of Montgieux.

The Examiner rejected claims 3 and 6 to 9 under 35 U.S.C. § 103(a) based upon the teachings of Montgieux and Teodorescu.

The Examiner rejected claims 10 and 11 under 35 U.S.C. § 103(a) based upon the teachings of Montgieux, Teodorescu, and O'Dwyer.

The Examiner rejected claim 5 under 35 U.S.C. § 103(a) based upon the teachings of Montgieux and Tao.

The Examiner indicates that:

Montgieux discloses a breathing detection device and alarm comprising an attachable transmitter placed inside the box (1) and attached to an abdominal belt (29), that is elastic; the transmitter is connected with a portable receiver carried by the person monitoring the child. Montgieux does not use the term “pliable chest strap of a soft and formable material”; however, the elastic strap as disclosed by Montgieux is obviously soft and formable, since the strap is wrapped around the contour body of the child and elasticity is expanded to form fit the child's body (col. 4, lines 39-66). Although Montgieux discloses wrapping the monitoring device around the abdominal of the child; thus, whether the breathing monitor is wrapped around the chest or the abdominal is merely one's preference to monitor the breathing movement; since both areas moves [sic] when a person breathes.

(Final Rej. 2, 3)

Appellants argue that the obviousness rejection of claims 1, 2, and 4 is inappropriate because:

Montgieux fails to teach a *pliable* chest strap of a soft and *formable* material being easily wrapable about the chest of an infant. In contrast, Montgieux teaches a rigid element connected to a stiff, moveable strap. In addition, Montgieux fails to teach a first resonant sensor for detecting respiration and movement of the infant and a second resonant sensor spaced laterally apart from the first resonant sensor for detecting heart rate pulse.

Furthermore, Montgieux fails to teach a receiver comprising a lighting means.

(App. Br. 8).

Based upon the foregoing, we must determine whether the Examiner erred by finding that Montgieux teaches or suggests a pliable chest strap of a soft and formable material that is easily wrapable about the chest of an infant.

Inasmuch as Montgieux describes the belt 29 as an elastic belt that wraps around an infant (col. 4, ll. 39 to 66), we agree with the Examiner's statement (Final Rej. 2) that the elastic strap as disclosed by Montgieux "is obviously soft and formable" since the strap wraps around the contour of the child, and elastically form fits the child's body.

With respect to the teaching in Montgieux that the belt is wrapped around the abdomen of an infant, we also agree with the Examiner's statement (Final Rej. 2, 3) that it would have been obvious to the skilled artisan to wrap the belt around the chest of an infant to monitor breathing since both the abdomen and the chest move when a person breathes.

Appellants' other arguments are not commensurate in scope with claims 1, 2, and 4 since neither claim includes first and second resonant sensors, and a lighting means.

In summary, the obviousness rejection of claims 1, 2, and 4 is sustained because the Examiner did not err in finding that Montgieux teaches or suggests a pliable chest strap of a soft and formable material that is easily wrapable about the chest of an infant.

Turning next to the obviousness rejection of claims 3 and 6 to 11, we agree with the Examiner's finding (Final Rej. 3) that "Teodorescu et al. discloses a respiration and movement monitoring system including a resonant sensor (50) and may be used interchangeably with first sensor (12) and second sensor (18) to monitor the respiration and movements of an infant (14) (col. 3, lines 55-61; col. 4, lines 34-54)." Based on the teachings of Teodorescu, we agree with the Examiner's contention (Final Rej. 4) that it would have been obvious to the skilled artisan to provide Montgieux with a second sensor as taught by Teodorescu to make the Montgieux breathing detection system into a more "effective fail-safe monitoring system." Appellants' arguments (App. Br. 9) concerning "a second resonant sensor which detects heart rate or pulse" and "a lighting means" are not commensurate in scope with representative claim 3. Thus, the obviousness rejections of claims 3 and 6 to 11 are sustained.

Turning lastly to the obviousness rejection of claim 5, Appellants' argument (App. Br. 9) concerning "an incandescent illumination panel which functions as a night light, thereby illuminating continuously during infant sleeping periods" is not commensurate in scope with claim 5 which

merely recites “a lighting means.” Appellants’ argument (App. Br. 9) that Tao “teaches a visual alarm designed to illuminate upon cessation of movement” is not convincing of the nonobviousness of the claimed invention since claim 5 does not preclude such an operation by the lighting means in Tao.

In summary, the Examiner’s articulated reasoning in the rejections supports a legal conclusion of obviousness. *KSR Int’l v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007).

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED

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